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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JACK E. ALTMAN,

Defendant and Appellant.

2d Crim. No. B185372
(Super. Ct. No. SA053146)
(Los Angeles County)

A jury convicted Jack E. Altman of possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)),¹ possession of cocaine (Health & Saf. Code, § 11350, subd. (a)), and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The court found Altman had suffered a prior conviction for a serious or violent felony. He was sentenced to a base term of 16 months (low term) for the firearm offense, and consecutive terms of 8 months for possession of cocaine and possession of methamphetamine. The court doubled the sentence for each offense under the three strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and ordered the sentences to be served consecutively. Altman claims the trial court imposed consecutive sentences in

¹ All statutory references are to the Penal Code unless otherwise stated.

the erroneous belief that consecutive sentences were mandatory under section 667, subdivision (c)(6). We reverse for resentencing, but affirm the convictions.

FACTS

Police officers had a warrant to search Altman's home. Altman left the residence and drove away in a car. Police officers followed, stopped the car, and detained Altman. Altman was returned to his residence and advised about the search warrant. He admitted there was methamphetamine and cocaine in the house as well as a firearm. An officer searched the house and found a handgun, methamphetamine, and cocaine in the drawers of Altman's desk.

DISCUSSION

Altman contends that the matter must be remanded for resentencing because the court misunderstood its discretion to impose concurrent terms for the offenses. Respondent concedes and we agree.

The three strikes law provides that "[i]f there is a concurrent conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count" (§§ 667, subd. (c)(6), 1170.12, subd. (a)(6).)

In *People v. Lawrence* (2000) 24 Cal.4th 219, 233, the Supreme Court stated: "We read the mandatory consecutive-sentencing provision of the three strikes law as follows: If there are two or more current felony convictions 'not committed on the same occasion,' i.e., not committed within close temporal and spacial proximity of one another, *and* 'not arising from the same set of operative facts,' i.e., not sharing common acts or criminal conduct that serves to establish the elements of the current felony offenses of which defendant stands convicted, then 'the court shall sentence the defendant consecutively on each count' pursuant to subdivision (c)(6). Conversely, where a sentencing court determines that two or more current felony convictions were either 'committed on the same occasion' or 'aris[e] from the same set of operative facts' . . . , consecutive sentencing is not required under the three strikes law, but is permissible in the trial court's sound discretion."

Here, Altman's offense of possession of a firearm by a felon and his two drug possession offenses were all committed simultaneously in the same house. Therefore, the trial court had discretion to impose concurrent sentences. The record shows, however, that the trial court was unaware that it had such discretion. In sentencing Altman, the court stated that "by operation of the three-strikes law I must give him consecutive sentences" As respondent asserts, the proper relief when the court misunderstands its discretion is to remand the matter so that the trial court may exercise discretion. (*People v. Deloza* (1998) 18 Cal.4th 585, 600.)

So much of the judgment as relates to sentencing is reversed. The trial court is instructed to exercise its discretion in deciding whether to sentence Altman to consecutive or concurrent terms and to state its reasons. In all other respects, the judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

James R. Dabney, Judge
Superior Court County of Los Angeles

Russell Fong, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc E. Turchin, Susan D. Martynec, Supervising Deputy Attorneys General, for Plaintiff and Respondent.